In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1686

INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, MARINE DIVISION, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD, et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

Brief for California and Hawaiian Sugar Company, Westchester Marine Shipping Co., Inc., and Pyramid Sugar Transport, Inc. in Opposition

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Respondents California and Hawaiian Sugar Company (C&H), Westchester Marine Shipping Co., Inc. (Westchester) and Pyramid Sugar Transport, Inc. (Pyramid) oppose the petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 539 F.2d 554 and reprinted in Pet. App. 1a-14a. The Decision and Order of the National Labor Relations Board, including the Decision of the administrative Law Judge, are reported at 219 NLRB 26 and reprinted in Pet. App. 19a-75a.

JURISDICTION

The judgment of the Court of Appeals (Pet. App. B) was entered on October 19, 1976, and petitioner's petition for rehearing was denied on February 3, 1977 (Pet. App. C). By an order dated April 25, 1977, Mr. Justice Powell extended the time for filing a petition for certiorari to and including June 1, 1977. This Court's jurisdiction to review the judgment below is based on 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether the International Organization of Masters, Mates and Pilots, Marine Division, International Longshoremen's Association. AFL-CIO (the MM&P) violated Section 8(b)(1)(B) of the National Labor Relations Act by picketing the M/V SUGAR ISLANDER and the S/S ULTRAMAR in order to force the employers to replace their present licensed deck officers with deck officers who are members of the non-incumbent MM&P.[1]

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1. In framing the questions presented herein, the MM&P suggests that, since 97% of its members are supervisors (and therefore not statutory "employees") and since its conduct in this case was perpetrated solely in the interest of its supervisor-members, Section 8(b)(1)(B) has no application whatever. These suggestions are nothing more than a masquerade for two contentions which were made and resoundingly refuted in the proceedings below: (1) that the MM&P is not a "labor organization" within the meaning of the Act; and (2) that the picketing was not unlawful because it was carried out by something called the "Offshore Division" of the MM&P, an administrative subdivision which petitioner claimed was an independent, separate entity composed only of supervisor members.

The first of these contentions has been so often rejected that to raise it again seems to us to be specious. For cases in which the MM&P has been held to be a labor organization for purposes of one section of the Act or another see: *Danielson v. Masters, Mates and Pilots*, 521 F.2d 747, 89 LRRM 2564 (2nd Cir. 1975); *International Organization of Masters, Mates and Pilots (Marine and Marketing Int'l. Corp.)*, 197 NLRB 400 (1972); *enf'd., Int'l Org. of Masters, Mates & Pilots, et al. v. NLRB*, 486 F.2d 1271 (D.C. Cir. 1973); *cert. den.* 416 U.S. 956, 85 LRRM 3018 (1974); *Dente v. Int'l Org. of Masters, Mates and Pilots*, 492 F.2d 10 (9th Cir. 1973); *Lykes Bros. Steamship Co.*, 197 NLRB 363, 80 LRRM 1813 (1972); *Compton v. Int'l Org. of Masters, Mates & Pilots*, 78 LRRM 2598 (D.C. Puerto Rico 1971); *Int'l Org. of Masters, Mates & Pilots of America, Inc. (Chicago Calumet Stevedoring Co., Inc.)* 144 NLRB 1172 (1963) (Supplemental decision); *enf'd., Int'l Org. of Masters, Mates & Pilots v. NLRB*, 351 F.2d 771 (D.C. Cir. 1965); *National Maritime Union (Standard Oil Co.)*, 121 NLRB 208 (1958); *enf'd., National Marine Engineers v. NLRB*, 274 F.2d 167, 45 LRRM 2499 (2nd Cir. 1960); *Madden v. Int'l Org. of Masters, Mates and Pilots*, 259 F.2d 312 (7th Cir. 1958); *Douds v. Seafarers International Union, et al.*, 148 F.Supp. 953 (E.D.N.Y. 1957); *J. W. Banta Towing Co., Inc.*, 116 NLRB 1787 (1956); *Wilson Transit Co.*, 80 NLRB 1476 (1948).

The second contention, i.e., the separateness of the Offshore Division, fell under the weight of overwhelming evidence that the Offshore Division is an integral part of the MM&P and that the picketing was decided upon, ordered and monitored by the parent organization, the MM&P. (Pet.App.8a; 65a-68a, *passim*).

STATUTES INVOLVED

The relevant provisions of the National Labor Relations Act, as amended, 29 U.S.C. § 151, *et seq.* are set forth at Pet. 3-4.

STATEMENT OF THE CASE

The jurisdiction of the Court of Appeals was invoked by the MM&P on a petition under 29 U.S.C. § 160(f) to review the Decision and Order of the Board, and by the Board on a cross-petition for enforcement under 29 U.S.C. § 160(e). C&H, Westchester and Pyramid, upon timely application therefor, were granted leave to intervene.

A. The Relationship of the Parties Respondent and the Vessels Involved.

C&H is the time charterer of the M/V SUGAR ISLANDER from Pyramid; Pyramid, in turn, is the bareboat charterer of the vessel and it mans and operates the ship for the account of C&H. The SUGAR ISLANDER was delivered to Pyramid in August 1973, at which time Pyramid entered into a collective bargaining agreement with the Marine Engineers Beneficial Association (MEBA) for the manning of the vessel with licensed deck officers[2] and engineers.

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2. These deck officers were members of the incumbent union, MEBA, and were the persons selected by the employers as the supervisors and grievance-adjustors for the unlicensed crews.

Westchester, under contract with the bareboat charterer, Aries Marine Shipping Co., Inc., is the crewing and husbanding agent for the S/S ULTRAMAR. The ULTRAMAR was also delivered in August 1973, at which time Westchester and MEBA also entered into a collective bargaining agreement covering the licensed deck officers and engineers.

B. The Essential Facts.

Long before the construction of the SUGAR ISLANDER and the ULTRAMAR was completed, the MM&P had initiated efforts to secure the manning of the two vessels with MM&P deck officers. These efforts were resisted and the persons ultimately responsible for manning the ships chose instead to enter into labor contracts with MEBA. (Pet. 7; App. 3a-5a). The reason, plainly stated, is that MEBA was able to offer an economically more favorable and unified labor relations package.

The SUGAR ISLANDER and the ULTRAMAR were at the time of their launching the most revolutionary American flag ships afloat.[3] The manning level for deck officers aboard both ships had been certified by the U.S. Coast Guard at one master and three mates, and there was therefore no need for the employers to bear the expense of larger complements of deck officers. MEBA offered a standard contract which called for a deck officer manning scale of a master and three mates. The MM&P rule, however, required that there be a master and *four* mates. Moreover, because of an alliance between MEBA and the Seafarers International Union (SIU), which represents the unlicensed crews, MEBA was able to offer "top-to-bottom" manning. This is an attractive feature, because the affinity between MEBA and SIU

3. The SUGAR ISLANDER was the only American built vessel with a completely automated engine room; it was the first vessel certified by the U.S. Coast Guard for unattended engine room operations. (Pet.App. 4a). The ULTRAMAR was the first American built ship capable of carrying such diverse cargoes as oil, bulk cargo and ore. (Pet.App. 3a).

tends to give stability to labor relations aboard the vessels. (Pet. 3a; 42a; fn. 9; 51a).

The MM&P and MEBA have in recent years been engaged in an escalating dispute over the representation of licensed deck officers, the MM&P proclaiming its inviolate, exclusive "right" to represent them, and MEBA asserting that they are fair game. Attempts to settle the dispute by legitimate means[4] have failed to produce results satisfactory to MM&P. So, in its frustration that union has turned to illegitimate means, and at various times between August 1973 and January 1974, and in various ports, the MM&P picketed the SUGAR ISLANDER and the ULTRAMAR and her sister ship the ULTRASEA, effecting on each occasion a complete cessation of the operation of the ships. The MM&P made no bones about it: its purpose was to force the employers to enter into collective bargaining agreements with the MM&P and to replace the MEBA deck officers[5] with its own members.[6]

In January 1974 C&H, Pyramid and Westchester filed unfair labor practice charges against the MM&P; the Board, and subsequently the Fifth Circuit, found that *in all respects* the MM&P's picketing had been violative of Section 8(b)(1)(B) of the Act.[7]

4. For example, Article XX of the AFL-CIO Constitution provides for internal arbitral machinery for processing such disputes, and proceedings thereunder have actually been undertaken, albeit unsuccessful from MM&P's point of view.

5. Who, it must be remembered, were the supervisors who had been *selected* by Pyramid and Westchester and who were the persons aboard the vessels who adjust grievances. (Pet. App. 56a-57a).

6. *Vide* the remarks of Thomas F. O'Callaghan, the then International President of the MM&P: ". . . I wanted a contract with them. . . .[I] wanted members of the Masters, Mates and Pilots serving aboard those vessels as licensed deck officers." (Pet. App. 50a).

7. At Pet. 7, petitioner makes the following *incorrect* statement: ". . . It is undisputed that the picketing had four separate and distinct objectives. . . ." To the contrary, both the Board and the Fifth Circuit found that, in view of the coercive means utilized and the fundamental replacement object, the remaining objects of the picketing were indistinguishable one from the other. (Pet. App. 12a-13a; 20a-21a, fn. 2).

ARGUMENT

A. The Decisions Below in No Way Conflict with the Supreme Court's Decision in Florida Power.[8]

Despite petitioner's efforts to stretch the principles involved (Pet. 10-15, *passim*), there is not even the remotest conflict between the decisions below and this Court's decision in *Florida Power*.[9] The cases present entirely different questions.

The essential ingredients of *Florida Power* and *American Broadcasting* (fn. 9, *supra*) are these:

1. discipline;
2. imposed by an *incumbent* union;
3. against supervisor-members;
4. who perform work;
5. during a lawful strike.

The central question in *those* cases is whether the employer's right to demand loyalty from its 8(b)(1)(B) representatives is outweighed by the union's right to preserve strike solidarity and to demand loyalty from its members.

In contrast, the elements of the present case are:

1. a *non-incumbent* union (MM&P);
2. picketing employers with whom it has no bargaining relationship;
3. to *force* the employers—
   a. to terminate their bargaining relationships with the incumbent union (MEBA);
   b. to execute a collective bargaining agreement with the non-incumbent union (MM&P);

8. *Florida Power & Light Co. v. International Brotherhood of Electrical Workers*, 417 U.S. 790 (1974).

9. Nor, for that matter, will any purpose be served in granting certiorari in the present case just so it can be considered together with *American Broadcasting Company, Inc. v. NLRB*, 93 L.R.R.M. 2958 (2nd Cir. 1976), *certiorari granted*, Nos. 76-1121, 76-1153, 76-1162, April 25, 1976. (Pet. 17). The factual and legal issues are entirely different.

   c. to terminate the employment of their selected 8(b)(1)(B) representatives (members of MEBA); and
   d. to replace those persons with 8(b)(1)(B) representatives who are members of the non-incumbent union (MM&P).[10]

There is in the present case no question of union discipline or contending loyalties and, therefore, no way that the rules enunciated in *Florida Power*, or those which will emerge when the Court decides *American Broadcasting*, can be applied here. And, thus, there is no conflict.

B. The Purposes of the National Labor Relations Act Will Best Be Served by Allowing the Decision of the Fifth Circuit to Stand Unmolested.

Petitioner here observes that it was not seeking to replace the employers' deck officers because of any objection to or interest in the way in which those deck officers performed their "grievance-adjusting functions." "It was merely seeking to obtain employment for its own members." (Pet. 13). This is nothing more than another way of saying that petitioner wants to displace MEBA-represented personnel with its own, who will then adjust grievances.

Let us suppose that the vessel owners capitulate, oust MEBA, and install MM&P. In the normal course of events, then, MEBA will establish a picket line. MEBA officers will observe that they really

10. This conduct, of course, brings the case squarely within the literal purview of Section 8(b)(1)(B). Petitioner does not dispute this. Indeed, in its reply brief in the Fifth Circuit the MM&P stated: "Both the Board and the intervenors emphasize the finding, *which we do not contest*, that one object of the picketing was to force the employers to replace their MEBA deck officers with MM&P deck officers. . . .

"While the literal language of the statute can be read as prohibiting picketing for this particular object . . . [w]e urge the Court . . . to look beyond the literal language. . . ." (Emphasis added). (MM&P Reply Br., 2-3).

are not critical of the way MM&P-represented officers handle grievances. No, not at all. All MEBA seeks, in this new situation, is "employment for its own members."

In short, the vessels will be inoperative whether manned by MM&P or by MEBA, since one union or the other will be always seeking "employment for its own members," and will emphasize this quest with a picket line.[11]

Petitioner dwells at length upon Congressional history. It decides, finally, that the "clear intent of the Congress . . . was to adopt a policy of neutrality" toward "strikes and picketing by supervisors." Even if this were so, and it is not, the Congress certainly *did not* intend a stand-down of American flag merchant shipping at the pleasure of two labor organizations.

What Congress *did* intend is stated in the preamble to the Act:

> *"It is the purpose and policy of this Act in order to promote the full flow of commerce,* to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, *to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other,* to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, *to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.* (Emphasis added.) (29 U.S.C. Sec. 141(b)).

Those purposes can best be carried out by letting the decision of the Fifth Circuit stand unmolested.

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11. To be sure, there are additional consequences. As is apparent from its full legal name (*supra*), the MM&P has an affiliation with the International Longshoremen's Association, whose members will refuse to handle cargo while an MM&P picket line is present. By the same token, the SIU, which represents unlicensed crewmen and which has an alliance with MEBA, will honor the picket lines when it is MEBA's turn to strike.

CONCLUSION

The petition should not be granted.

Respectfully submitted,

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